United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/923
29 July 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 923

Case No. 999: MOORE

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Kevin Haugh; Ms. Marsha Echols;

Whereas at the request of Gerald Moore, a former staff member of the United Nations International Drug Control Programme (hereinafter referred to as UNDCP), the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 December 1997 and 31 January 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 23 January 1998, the Applicant filed an application requesting the Tribunal, inter alia:

"...

(a) *[T]o rescind* the decision of the Secretary-General dated 9 July 1997 maintaining his decision to terminate the Applicant's appointment;

(b) *[T]o order* that the Applicant be reinstated with effect from 12 May 1995;

(c) *[T]o find and rule* that the Joint Appeals Board erred as a matter of law and equity in failing to provide appropriate and adequate compensation for the harm done to the Applicant for violation of his rights under the Staff Regulations & Rules;

(d) *[T]o award* the Applicant appropriate and adequate compensation to be determined by the Tribunal for the actual, consequential and moral damages suffered by the Applicant as a result of the Respondent's actions or lack thereof;

(e) *[T]o fix*, pursuant to Article 9, paragraph 1 of the Statute and Rules, the amount of compensation to be paid in lieu of specific performance at two year's net base pay in view of the special circumstances of the case."

Whereas the Respondent filed his answer on 23 April 1999;

Whereas the Applicant filed written observations on 7 June 1999;

Whereas, on 5 July 1999, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 15 January 1995, on a two-year intermediate-term appointment under the 200 Series of the Staff Rules, as Director, UNDCP Country Office, Myanmar, at the L-5, step X level. He separated from service on 16 June 1995.

Before entering the service of the United Nations, on 23 August 1994, in connection with his application for employment, the Applicant submitted a personal history form (P-11 form) to the Personnel Service, United Nations Office at Vienna (UNOV). Under section 27 of that form, which seeks an applicant's employment history, the Applicant noted that he had worked for the World Health Organization (WHO) from April 1984 to November 1992. Under the heading "Reason for leaving"on the form, the Applicant wrote "Develop own consultancy practice".

On 2 November 1994, the Senior Personnel Officer, Personnel Service, UNOV, wrote to the Applicant to extend an offer for a two-year appointment as Director, UNDCP, Country Office in Myanmar. On 21 November 1994, UNOV received a letter from the

Director, Action Programme on Essential Drugs,WHO, in response to a reference check stating that the Applicant had filed an application against WHO regarding the non-extension of his appointment with the International Labour Organization Administrative Tribunal (ILOAT) and that a ruling was not expected until February 1995.

On 25 November 1994, the Senior Personnel Officer informed the Applicant as follows:

> "...
>
> We have ... received official notice from WHO regarding a case you have pending with the Administrative Tribunal of the International Labour Organization against the World Health Organization relating to the Organization's non-renewal of contract on 31 October 1992.
>
> I regret to have to advise you that we are herewith withdrawing our offer in the light of this material omission in the personal history form (P-11) submitted by you on 23 August 1994 under Section 27 as it relates to the reason of your leaving WHO. ...
>
> ... we may be prepared to reconsider our position, should you provide a satisfactory explanation.
>
> ..."

On 27 November 1994, the Applicant wrote to the Senior Personnel Officer stating that he "had no intention of omitting any material points in filling out the personnel form." He went on to explain that the personnel form "does not request elaboration on whether it was my wish to leave WHO [or that] my contract had not been renewed, and therefore I did not feel obligated, at this stage at least, to go into further detail." He suggested that WHO's decision not to renew his contract had been influenced by vested interests connected with the pharmaceutical industry and noted that after he appealed the non-renewal of his contract, a WHO board of appeal, in July 1993, found unanimously in his favour. The Applicant further explained that since the original decision had been maintained by WHO, he had filed an

application with ILOAT "as a matter of principle" and that his ILOAT case was still pending. The Applicant offered to provide further clarifications to UNOV, if necessary.

On 28 November 1994, the Senior Personnel Officer, Personnel Service, UNOV, informed the Applicant that, "in light of the information provided [in the Applicant's 27 November letter], [they] now consider[ed] the matter clarified" and reinstated the offer of appointment to the Applicant. The Applicant therefore took up his duties under that appointment on 15 January 1995.

On 1 February 1995, ILOAT rendered Judgement No. 1405 in the Applicant's case. ILOAT found in favour of WHO, holding, among other things, that even if the more serious charges against the Applicant were based on hearsay, WHO acted within its discretion in not renewing the Applicant's contract. ILOAT noted that the Applicant had been criticised in his annual performance reports, had more than once failed to follow WHO's rules, and had made public statements at odds with WHO's policy.

On 25 April 1995, an individual identifying himself as a retired Assistant Director-General of WHO, wrote to the Senior Personnel Officer, UNOV, raising questions about the circumstances of the Applicant being hired as Director, UNDCP Country Office, Myanmar, in light of ILOAT judgement and the Applicant's "performance and behaviour in [WHO]".

On 26 April 1995, an individual sent a letter to the Senior Personnel Officer on Scrip World Pharmaceutical News letterhead, attaching an article from that publication about the Applicant and ILOAT judgement, as well as asking "whether the UN was aware of [the Applicant's] behaviour while at ... WHO."

On 27 April 1995, the Chief, Personnel Service, UNOV, requested WHO to provide him with a copy of ILOAT judgement in the Applicant's case. A copy was received by the Chief, Personnel Service, UNOV, on 2 May 1995.

On 4 May 1995, the Chief, Personnel Service, UNOV, wrote to the Assistant-Secretary-General, Office of Human Resources Management, in accordance with ST/AI/371, to report the Applicant's "omission to report and [his] provision of incorrect information upon

recruitment ... as well as to provide relevant information in accordance with staff rule 104.4. "
In the report, he provided a summary of the facts and concluded:

> "In view of the nature of the facts withheld [by the Applicant], the Executive Director ... intends to recommend immediate summary dismissal, but would prefer that the staff member resign from his position. The nature of the drug situation in Myanmar and the sensitive position that the staff member occupies in the programme, require urgent action. The potential damages to the reputation of UNDCP and the United Nations can be considerable, particularly since it already has been brought to our attention that certain media have already published or intend to publicize [ILOAT] case. ..."

On 12 May 1995, the Personnel Officer informed the Applicant that he was separated from service with immediate effect on the ground that Judgement No. 1405 revealed that "the real reason you left WHO was the non-renewal of your fixed-term appointment due to your performance record and WHO's assessment on various grounds that you were unfit for international service". He also stated that "according to the Judgement you were aware of these facts at the time of your separation from WHO." He further noted that had the Applicant completed the P.11 form correctly so that the circumstances surrounding his separation from WHO had been known to UNOV, the Applicant would not have been recruited. Finally, he explained that the Applicant's non-disclosure of those circumstances vitiated his employment contract and that, as a result, a valid contract never came into being.

On 19 May 1995, however, the Applicant was informed by Personnel Service, UNOV, that he would be placed on special leave with full pay with effect from 13 May 1995 until his departure from Myanmar on 16 June 1995.

On 22 May 1995, the Applicant requested the Secretary-General to review the administrative decision to separate him from service. Also on 22 May 1995, the Applicant filed with UNOV Joint Appeals Board (JAB) a request for suspension of action with respect to that decision.

On 14 June 1995, the JAB issued its report on the request for suspension of action. Its considerations, conclusion and recommendation read as follows:

"...

2. According to staff rule 111.2 (c) (ii), a recommendation of suspension of action may be made by a panel of the Board when two conditions are met: that the decision has not yet been implemented and that its implementation would result in irreparable injury to the staff member.

3. Based on the information transmitted by [the Applicant] together with the request of suspension and on the information received from UNOV Personnel Service on [the Appellant's] repatriation, the Panel noted that the administrative decision of separation of 12 May 1995 was with immediate effect and that repatriation scheduled to take place on 16 June 1995 was already in process.

4. The Panel expressed its concern that the immediate effect given to the decision hindered any possibility of suspension of action and circumvented the terms of the contract. It concluded however that, in the circumstances and within the terms of its mandate pursuant to staff rule 111.2 (c) (ii), it could not grant the requested suspension of action because the first condition for suspension - that the decision had not been implemented - was not fulfilled.

5. The Panel noted that its consideration of the request of suspension of action did not involve consideration of the validity of the administrative decision concerned. If [the Applicant] wished to have the decision reviewed in substance, he should request its review by the Secretary-General within two months of the decision (until 12 July 1995) and possibly at a later stage file and appeal with the Joint Appeals Board (staff rule 111.2 (a))."

Also on 14 June 1995, the Applicant sent a memorandum to the Secretary, JAB, through the Chief, Personnel Service, UNOV, requesting that "the administrative decision of May 12 to terminate [his] contract with UNDCP be withdrawn or reversed" and that the Applicant be reinstated. On 30 June 1995, the Chief, Administrative Law Unit, informed the Applicant that his letter dated 14 June 1995, addressed to the Chief, Personnel Service, would be treated as if it were a request for review properly addressed to the Secretary-General.

Having received no substantive reply to that request for review, on 10 September 1995, the Applicant lodged an appeal with the JAB.

On 7 March 1997, the JAB adopted its report. Its conclusions and recommendation read as follows:

"**Conclusions of the JAB Panel**

The Panel considers that the issuance of ... ILOAT Judgement No. 1405 as it was formulated and the related press reports were elements that justified the reassessment by the Respondent of the Appellant's suitability for the sensitive post of UNDCP Country Director in Myanmar, and the reconsideration of its decision to appoint him.

On the issue of the validity of the contract, the Panel is of the opinion that a valid contract had indeed come into being following reinstatement of the offer of appointment by the Respondent, in circumstances where the Respondent had not exercised the caution expected from a wise manager, for example by failing to seek detailed information as to the circumstances under which the Appellant had left WHO. The Panel therefore considers that the terms of the letter of employment and the relevant Staff Rules and Regulations should have been applied in terminating the Appellant's appointment.

Staff regulation 9.1 (article IX), applicable to both 100 and 200 Series of staff, appears to be of particular relevance in the present case. It provides that the Secretary-General may terminate a fixed term appointment before its normal expiry for various reasons, including 'if facts anterior to the appointment of the staff member and relevant to his suitability come to light which, if they had been known at the time of his appointment, should under the standards established in the Charter, have precluded his appointment.'

The Panel regrets that the procedures foreseen for termination under staff regulation 9.1 were not applied in the present case, since they would have ensured a more proper and expedient decision-making process and might well have proved more cost-effective than the approach chosen, by avoiding the costs of a lengthy appeal procedure.

It further notes that some of the requirements provided for in cases of termination under the Staff Regulations and Rules and the letter of appointment have *de facto* been met, such as the one month's written notice, fulfilled by placing the

Appellant on leave with full pay for one month from his termination until his departure from Myanmar, and the payment of repatriation grant and travel costs. While not supporting the Appellant's claims for reinstatement or compensation for financial loss, the Panel recommends that the Respondent review the Appellant's termination entitlements in the light of staff regulation 9.3."

On 9 July 1997, the Under-Secretary-General for Administration and Management, transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's conclusion that the issuance of ILOAT Judgement No. 1405 as it was formulated justified the reassessment of your suitability for the post of Country Director in Myanmar, and the reconsideration of the decision to appoint you. He has also taken note of the Board's view that a valid contract had come into being following reinstatement of the offer of appointment by UNOV and that the relevant staff regulation and staff rule should have been applied in terminating your appointment. The Secretary-General has also taken note of the fact that, as stated in the Board's report, you had *de facto* been given one month's written notice, since you were placed on leave with full pay for one month from the time of the termination of your appointment to the time of your departure from Myanmar, and that you received repatriation travel costs related to the shipment of your personal effects connected with your repatriation. Finally, the Secretary-General has taken note of the Board's recommendation that your termination entitlements be reviewed. In light of the Board's findings, and in particular of the procedural issue in connection with the termination of your appointment, the Secretary-General has decided to grant to you compensation equivalent to one month's net base salary at the time of termination of your appointment and to take no further action regarding your case."

On 23 January 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant had a valid appointment, which was improperly terminated prior to its expiration date in violation of staff regulation 9.1, staff rule 109.3, and the terms of the Applicant's appointment.

2. The Applicant was denied due process, because he was never afforded an opportunity to respond to the charges made against him concerning his suitability for service.

3. Prior to the issuance of his contract with UNOV, the Applicant made full disclosure to the Respondent concerning his case pending before ILOAT. The subsequent decision by ILOAT did not change any of the essential facts already disclosed to UNOV prior to his being hired. The issue was only reopened when outside interests put pressure on UNOV by criticizing the Applicant in the press.

Whereas the Respondent's principal contentions are:

1. The Applicant's misrepresentation and material omissions in connexion with his recruitment by the Respondent justified termination of his appointment; the Respondent's discretionary decision to terminate the Applicant's appointment accords with staff regulation 9.1 (a) (ii).

2. The Respondent's decision to terminate the Applicant's appointment did not violate his due process rights under the Staff Regulations and Rules.

3. The Applicant has not met the evidentiary burden of proof showing that the Respondent's decision to terminate the Applicant's appointment was vitiated by an improper motivation.

The Tribunal, having deliberated from 15 to 29 July 1999, now pronounces the following judgement:

I. The Applicant claims that he had a valid contract with UNOV and that his appointment was never properly terminated. He argues that the manner in which his termination was effected amounted to a denial of due process and was based on prejudicial considerations. The principal issue arising from his claim is whether his termination was warranted either because of material omissions and misrepresentations in the P.11 form and in the subsequent letter of 27 November 1994, or under staff regulation 9.1 because the judgement from ILOAT brought new facts to light which, had they been known at the time, would have precluded his recruitment. Another question is whether the admitted "infirmity" in the Applicant's recruitment process caused him damage warranting additional compensation, or whether he was entitled only to one month's net base salary, as recommended by the JAB and accepted by the Respondent.

II. On 23 August 1994, the Applicant submitted a P.11 form in connection with his application for the post of Director, UNDCP, Country Office, Myanmar. In completing the P.11 form, the Applicant certified that the statements made by him in answer to the questions on that form were true, complete and correct to the best of his knowledge and belief and that he understood that any misrepresentation or any material omission made on the P.11 form or other document requested by the United Nations renders a staff member of the United Nations liable to termination or dismissal. In the box provided to give his reasons for leaving the services of his prior employer, WHO, he wrote "Develop own consultancy practice."

The Tribunal is satisfied that this reply was, to say the least, disingenuous and grossly misleading and that it constituted a material misstatement of fact. The Applicant had left WHO not to develop his own consultancy practice, but rather because his fixed-term appointment had not been renewed. In fact, at the time he applied for the UN post, he was in the process of appealing against WHO's decision not to renew his contract, seeking to have the decision revoked.

III. On 21 November 1994, UNOV received a reply to one of its routine reference checks sent to previous supervisors of employment candidates. The reply, from the Director, Action Programme on Essential Drugs, WHO, stated that the decision not to extend the Applicant's contract was at that time the subject of a complaint before ILOAT, and that therefore WHO was not in a position to respond to questions posed by UNOV.

On 25 November 1994, the Senior Personnel Officer, UNOV, informed the Applicant that UNOV was withdrawing its offer of employment in the light of a material omission in the P.11 form as it related to his reasons for leaving WHO's appointment. The letter indicated that UNOV was prepared to reconsider its position should the Applicant be able to provide a satisfactory explanation.

The Applicant replied to UNOV by letter dated 27 November 1994, in which he explains that the P.11 form did not request or allow for the elaboration of his reasons for leaving WHO's employment, that WHO's decision had been influenced by vested interests connected with the pharmaceutical industry and that a WHO board of appeal had, in July 1993, recommended unanimously in his favour. He further explained that since the original decision had been maintained by WHO he had filed an application with ILOAT asserting that the decision was tainted with a procedural flaw and that an ILOAT judgement was still pending. He offered to provide additional explanations to UNOV, if required. He further indicated that he had not kept a copy of the completed P.11 form but stated, "If what I believe I wrote in the small box relating to the reason for leaving WHO was end of contract or similar, this was basically correct." As earlier indicated, he had not written "End of contract" or anything similar to that in the appropriate box but indicated he had left WHO to develop his own consultancy practice, which implied that his departure from WHO was voluntary and perhaps even that it had occurred at his own instigation.

IV. The Tribunal is satisfied that the Applicant's excuse or explanation that the form did not request or allow for the elaboration of his reasons for leaving WHO's employment is

disingenuous and without merit. The Tribunal is further satisfied that the Applicant's letter of 27 November 1994, to the Senior Personnel Officer, UNOV, was likewise disingenuous and lacking in candour. It failed to set out the allegations that had been made against him and that were the subject matter of his application to ILOAT. Also it presented a misleading précis as to the recommendations of the Board of Appeal insofar as he was concerned. For example, the Applicant stated that the Board of Appeal had "found unanimously in his favour", which suggests that such finding was on the merits. However, it merely found that the decision not to renew his contract was procedurally flawed, that the reasons which had been given for such decision were unclear, and that his unsuitability for international service had not been substantiated. The letter also failed to address the allegations that had been made against him and the content of the Board of Appeal's report. The Tribunal fully appreciates that the Applicant had in the course of that letter expressed a reluctance to go into the facts of his dispute with WHO, on the grounds of confidentiality. However, the Tribunal is nonetheless satisfied that by the letter of 27 November 1994, the Applicant had presented his situation in a disingenuous manner and that by this letter he had not effectively *"put to right"* the grossly misleading picture which had arisen by virtue of the manner in which he had completed the original personal history in the P.11 form.

V. By facsimile dated 28 November 1994, the Senior Personnel Officer, UNOV, informed the Applicant that, in light of the information he had provided in his 27 November letter, and without requesting any further explanation, "[they] now consider[ed] the matter clarified" and reinstated the employment offer to the Applicant. The Applicant took up his duties with UNOV on 15 January 1995.

VI. In April 1995, UNOV learned that ILOAT rendered Judgement No. 1405 in favour of WHO in respect of the Applicant's application and learned that the Applicant had been the subject of critical press comments. UNOV informed the Applicant by letter of 12 May 1995

that he was separated from service with immediate effect on the grounds that:

> "...
>
> 3. ILO Administrative Tribunal Judgement No. 1405 reveals that the real reason you had left WHO was the non-renewal of your fixed-term appointment due to your performance record and WHO's assessment on various grounds that you were unfit for international service. According to the judgement you were aware of these facts at the time of your separation from WHO. Your letter dated 27 November 1994 to [the Senior Personnel Officer] also misrepresents the facts and omits essential information.
>
> 4. If you [had] filled out the P.11 form correctly and properly so that the circumstances surrounding your separation from WHO would have been known to us, you would not have been recruited.
>
> ..."

Following an exchange of communications between the Applicant and UNOV, the Applicant was placed on special leave with full pay from 13 May until his departure from Myanmar on 16 June 1995, rather than immediately separated from service.

VII. Staff regulation 9.1 is of particular relevance in the present case. It provides that the Secretary-General may terminate a fixed-term appointment before the normal expiration for various reasons, including "[i]f facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of his or her appointment, should under the standards established in the Charter, have precluded his or her appointment." The JAB regretted that the procedures foreseen in the termination under staff regulation 9.1 were not applied in the present case since "they would have ensured a more proper and expedient decision making process and might well have proven more cost effective than the approach chosen, by avoiding the costs of a lengthy appeal procedure". It further noted that some of the requirements provided for in cases of termination under the Staff Rules and Regulations and the letter of appointment have *de facto* been met, such as one

month's written notice, fulfilled by placing the Applicant on leave with full pay for one month from his termination until his departure from Myanmar, and the payment of a repatriation grant and travel costs. Whilst not supporting the Applicant's claim for reinstatement or compensation for financial loss, the Panel recommended that the Respondent review the Applicant's termination entitlements in the light of staff regulation 9.3. This recommendation was duly accepted by the Respondent.

VIII. The Applicant advances two principal legal arguments in support of his application to this Tribunal. First he argues that there were procedural defects in the termination of his appointment. Second he argues that the decision itself was influenced by prejudice or improper motive.

IX. In relation to the first argument, the Applicant contends that the Respondent did not seek to invoke staff regulation 9.1 but instead argued that there had never been a valid contract because of the material omission and misrepresentation. He claims that prior to his termination he was in fact never afforded an opportunity to address the issue of his suitability for international civil service or other issues raised in connection with the non-renewal of his contract by WHO. He argues that the Respondent had the obligation to provide him with the reasons for the termination of his appointment and to allow him an opportunity to have a hearing on the merits by convening a special advisory board. He argues also that the Respondent's choice not to do so denied him any chance to defend himself and, alternatively, that the Respondent could have chosen to dismiss him summarily with the possibility of a subsequent disciplinary hearing but did not do so.

X. With regard to the claim that the Respondent did not invoke staff regulation 9.1, the Tribunal is satisfied that the JAB was correct in its finding that while the Respondent did not expressly invoke that regulation, he *de facto* applied it to the Applicant's situation.

As to the Applicant's contention that no termination under staff regulation 9.1 should have taken place until the matter had been considered and reported on by a special advisory board, the Tribunal is satisfied that whilst that particular provision is applicable in relation to permanent appointments, it has no mandatory application in relation to fixed-term appointments (cf. Judgement No. 637, Chhatwal (1994)). The Applicant, having been the holder of a fixed-term appointment, was thus not entitled to have a special advisory board convened to review the termination of his appointment. Accordingly, the Applicant's rights to due process were not violated.

XI. As to the Applicant's second argument that the decision was tainted by some improper motive or prejudice, the Tribunal is satisfied that the onus of proving such allegations by means of cogent evidence has not been discharged here. The Respondent was entitled to accept ILOAT judgement and, in light of its findings of fact, to have concluded that new facts had come to light which had they been known previously would have precluded the Applicant's appointment. The Tribunal will not review the findings of ILOAT or investigate or adjudicate upon the charges of misconduct or breaches of the Staff Regulations which were alleged against the Applicant in connection with the performance by him of his duties at WHO. What is at issue here is whether the information submitted by the Applicant in his P.11 form was "true, complete and correct" and, if there was a deficit therein, whether this deficit was cured by the additional information submitted by the Applicant in his letter of 27 November 1994 following upon which the Respondent reinstated its offer to appoint the Applicant.

XII. The Respondent acknowledges that the Applicant's recruitment was not handled correctly. He acknowledges that, once UNOV became aware that the Applicant had left WHO's employment under what appeared to be controversial circumstances, as indicated in WHO's 17 November 1994 letter to UNOV, he should have made further attempts to inform himself of the situation, beyond simply accepting the Applicant's explanatory letter of

27 November 1994. The Respondent submits that material information regarding the non-renewal by WHO of his fixed-term appointment was omitted from this letter. The Respondent also submits that, notwithstanding the inadequacies of the recruitment process, his decision to terminate the Applicant's fixed-term appointment was both justified and lawful.

The Respondent argues that since the P.11 form itself provided the Applicant with actual notice that, "any misrepresentation or material omission made on the P.11 form" rendered him liable to termination or dismissal, this entitled the Respondent to terminate his fixed term appointment once his misrepresentation and material omissions came to light. He also asserts that the "inadequacies of the recruitment process" did not estop him from terminating the Applicant or waive any of the Respondent's rights to act on such information when it came to his notice.

XIII. The Tribunal is satisfied that, whilst there was a material omission or misrepresentation contained in Applicant's answers on the P.11 form which indicated that he had ceased working for WHO by reason of his decision "to develop his own consultancy business", such omission or misrepresentation cannot be looked upon in isolation. It must be considered in the light of the additional information furnished by the Applicant's letter of 27 November 1994 which was furnished at the request of the Respondent, and sought by the Respondent because the Respondent knew that the severance had taken place "in controversial circumstances".

XIV. The Tribunal is satisfied that had the letter of 27 November 1994 made good the deficiency in or the misleading nature of the P.11 form that the Respondent would not have been entitled to terminate the Applicant's services on the ground that the form itself was inadequate or misleading. This is because in those circumstances the Respondent could not be said to have relied upon the deficient P.11 form alone, since having received it and doubted its accuracy and completeness, he had sought and received additional information. The

question now is whether the form, taken in conjunction with the said letter, misrepresented or failed to disclose a material fact. If so was UNOV induced to employ the Applicant in reliance thereon? Separately there is the question whether ILOAT judgement brought facts to light which had they been known to the Respondent previously would have precluded the Applicant's appointment. The Tribunal is satisfied that the additional information provided by the letter of 27 November 1994 was not to the same degree deceptive or disingenuous as the form and also notes that in that said letter the Applicant agreed to provide such additional information as might be sought from him in that regard. The Tribunal notes that the Respondent failed to seek any such additional information The Tribunal is satisfied that the Respondent was remiss in appointing the Applicant without awaiting the judgement of ILOAT, which the Respondent knew was to be rendered soon, or making such further inquiries as prudence would have dictated. It is further satisfied that the Respondent's conduct induced the Applicant to believe that with the letter of 27 November the Applicant had furnished full and complete information, that the original deficit was now rectified and that the question as to the circumstances under which he had left the employment of WHO was closed. The Tribunal holds that because the Respondent took the contents of that letter at face value and failed to seek further information, he induced the Applicant to take up the said fixed-term appointment and to forego such other business opportunities as independent consultant or otherwise as might have been available to him.

XV. The Tribunal is also satisfied that staff rule 9.1 applied here, whether expressly invoked or not. The Tribunal is satisfied that the additional information which ultimately came to light on receipt of ILOAT judgement contained sufficient "new facts" as would have precluded the Applicant's appointment or the granting of the said fixed-term appointment had those facts been known to the Respondent at the material time. The Tribunal holds that this entire unfortunate situation was caused in large part by the Respondent's failure to exercise ordinary prudence in recruiting the Applicant and in particular by inducing him to believe that

his letter of 27 November 1994 had fully cured the defects arising from the manner in which he had completed the original P.11 form.

XVI. For the foregoing reasons, the Tribunal orders the Respondent:

(i) To pay to the Applicant, if he has not done so already, the one month he agreed to pay in his letter to the Applicant of 9 July 1997; and

(ii) To pay an additional amount equivalent to two months' net base salary at the rate in effect at the time of separation, as compensation for the damage caused by the precipitate employment of the Applicant, which contributed to the early termination of his appointment.

(Signatures)

Hubert THIERRY
President

Kevin HAUGH
Member

Marsha ECHOLS
Member

Geneva, 29 July 1999

Maritza STRUYVENVERG
Executive Secretary